

DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA
OFFICE OF PLANNING
Petitioner,

v.

FARAH AHANNAVARD
Respondent.

Case No.: OP-I-07-T100112

FINAL ORDER

I. Introduction

This case arises under the Civil Infractions Act of 1985, as amended (D.C. Code, 2001 Ed. §§ 2-1801.01 *et seq.*) and the Zoning Act of 1938 as amended (D.C. Code, 2001 Ed. §§ 6-641.01 *et seq.*). By Notice of Infraction (No. T100112) (“NOI”) served on July 21, 2007, the Government charged Respondent, Farah Ahannavard, with violating 12 District of Columbia Municipal Regulations (“DCMR”) 105.1.¹ The violation arises from Respondent’s failure to obtain a building permit before adding two exterior steps in a house in a Historic District and

¹ 12A DCMR 105.1. provides in part:

Required Permits. A permit shall be obtained from the code official before any of the construction activities or regulated actions specified in Sections 105.1.1 through 105.1.13 shall begin.

* * *

105.1.3 The owner, builder, or authorized representative shall be responsible for securing all the required permits, or for obtaining a declaration by the code official stating that a permit is not required. Work started without a permit where a permit is determined to be required shall be a violation of the Construction Codes.

replacing windows in violation of the duly authorized building permit (the NOI listed both alleged failures in one violation and sought one fine for both).

The Government alleged that the violations occurred on July 18, 2007, at 217 F St., NE ("Property") and sought a \$2,000 fine. Respondent filed an answer with a plea of Deny on August 16, 2007. An evidentiary hearing was held on this matter on October 11, 2007, at 9:30 a.m. Respondent represented herself and testified at the hearing. The Government was represented by Keith Lambert, Building Inspector, who also testified at the hearing. During the hearing the Government's exhibits 101, 103, 105-108, 111, and 113-115 and Respondent's exhibits 200-207 were admitted into evidence. During a discussion of preliminary matters, Respondent changed her plea regarding installation of the improper windows to Admit with Explanation. Respondent explained that the windows were changed because the window openings were in poor shape and Respondent's contractor recommended the windows that were actually installed at the Property.

Each party insisted that the building plans submitted with Respondent's permit application supported its position in this case. However, neither party brought a copy of these plans to the hearing. Thus, I indicated during the hearing and in an Order dated October 15, 2007, that the parties were to obtain and review the plans to determine what exactly was approved. The Government was also ordered to file a report concerning this review. The Government submitted a report on February 29, 2008, indicating that it reviewed the plans with Respondent. The Government reported that the plans do not authorize the work in question. Respondent did not file a response to the Government's report. Based on the evidence adduced at the hearing and the entire record herein, I make the following findings of fact and conclusions of law.

II. Findings of Fact

1. On July 25, 2003, the Government issued Building Permit B453524, which allowed certain remodeling work at the Property. Exhibit 101. The permit does not authorize Respondent to add exterior steps, or install any windows. On September 9, 2003, Inspector Lambert issued a Stop Work Order, because Respondent did not have a permit authorizing window replacement. Exhibit 103. Respondent received a window replacement permit on September 17, 2003. Exhibit 105. This permit (B455118) authorized window replacement with “1/1 wood windows to fit existing openings.” Exhibit 105.

2. On March 1, 2004, Inspector Lambert issued a second Stop Work Order because the windows installed by Respondent were not the proper size and not totally wood. Exhibit 106. Inspector Lambert also noted that the front entrance steps (which lead to the main floor of the Property) were being built without an approved permit. Exhibit 106, *see also* exhibit 107 (photographs of the offending construction). On June 1, 2004, Inspector Lambert went back to the Property and determined that Respondent had continued substituting windows with the unapproved replacements and finalizing the unapproved front steps. Exhibit 108. On June 24, 2004, in the absence of abatement on Respondent’s part, Inspector Lambert issued a Stop Work Order. Approximately 1½ years later, on November 29, 2005, Respondent received a permit for a limited portion of the required abatement. Exhibit 113. While Respondent completed the approved abatement, she has not abated or otherwise brought into compliance other aspects of the work on the Property. Exhibits 114, 115.

3. Respondent was relying on her contractors to guide her through the remodeling work and permit process. Respondent’s contractor instructed her to buy the windows that were installed (in violation of permit B455118) because he said the window openings were in poor

condition and required a different window than originally identified. Respondent's contractor made this suggestion after the permit was issued. On November 8, 2005, the Government acknowledged in a letter that "there are a number of very complex obstacles to re-lowering the front steps to match the original condition. I further understand that, due to damage incurred during the construction of nearby Station Place, there are some very real structural concerns with respect to undertaking such work. While we would ideally prefer to see the steps lowered to their original height, we certainly do not wish the remedial work to cause further structural damage to your historic property." Exhibit 207 (letter from Emily Paulus, Architectural Historian with Office of Planning).

III. Conclusions of Law

The Government has charged Respondent with violating 12 DCMR 105.1, because Respondent had used replacement windows that did not comport with her Building Permit and had added two exterior steps to a house in a Historic District. The violation is a Class 1 infraction punishable by an authorized, maximum fine of \$2,000 for a first offense. 16 DCMR 3306.1.1. The Government has requested a \$2,000 fine.

By way of Respondent's plea of Admit with Explanation to the violation of installing unapproved, nonconforming windows Respondent acknowledges that on July 18, 2007, she installed unapproved windows in her house in a Historic District. Respondent maintained that she did so on the express advice of her contractor and that she did not know that the substitute windows failed to comply with the permitting standards. While I am sympathetic with homeowners who rely, in good faith, on their contractors for advice and guidance, this reliance does not absolve Respondent from responsibility for the improper replacement of windows on her Property.

On the issue whether Respondent improperly added two exterior steps to her house, the Government has proven by a preponderance of evidence that Respondent did add these steps in violation of the duly issued permit. Exhibits 106, 107 (third photograph), 108 (second photograph), 111, and 114 (first and second photograph). Respondent again argued that she relied on her contractor to receive the appropriate permits such that Respondent could add the two exterior steps and otherwise conduct the remodeling work in compliance with the pertinent regulations. The Government opposed any fine mitigation in this case. However, even though this problem is completely Respondent's making, in seeking the maximum fine, the Government failed to acknowledge that its own Architectural Historian indicated that structural concerns may prevent Respondent from returning her exterior stairs to their original height. Exhibit 207. thus, it is not clear that Respondent could be reasonably expected to abate the situation and return the Property to its "original" condition.

Thus, I conclude that Respondent's acceptance of responsibility, (partial) corrective action taken, and good faith efforts to comply with the governing standards are factors that support my reducing the suggested fine. I hereby impose a fine of \$1,250.

IV. Order

Based upon the above findings of fact and conclusions of law, it is this 15th day of April 2008

ORDERED that Respondent Farah Ahannavard is **LIABLE** for violating 12 DCMR 105.1 as charged in Notice of Infraction No. T100112; it is further

ORDERED that Respondent shall pay a fine in the amount of **ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$1,250)** in accordance with the attached instructions within

twenty (20) calendar days of the date of mailing of this Order (15 calendar days plus 5 days for service by mail pursuant, to D.C. Code, 2001 Ed. §§ 2-1802.04 and 2-1802.05); it is further

ORDERED that, if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, by law, interest shall accrue on the unpaid amount at the rate of 1½ % per month, beginning with the date of this Order, pursuant to D.C. Code, 2001 Ed. § 2-1802.03(i)(1); it is further

ORDERED that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits, pursuant to D.C. Code, 2001 Ed. § 2-1802.03(f), the placement of a lien on real or personal property owned by Respondent, pursuant to D.C. Code, 2001 Ed. § 2-1802.03(i), and the sealing of Respondent's business premises or work sites, pursuant to D.C. Code, 2001 Ed. § 2-1801.03(b)(7); it is further

ORDERED that the appeal rights of any person aggrieved by this Order are stated below.

April 15, 2007

_____/SS/_____

Jesse P. Goode
Administrative Law Judge